

ARLENE P. MESSINGER
Assistant General Counsel for SBIC Enforcement
U.S. Small Business Administration
Receiver for Prospero Ventures, L.P.
409 Third Street, S.W., 7th Floor
Washington, DC 20416
Telephone: (202) 205-6857
Facsimile: (202) 481-0325

DARRYL J. HOROWITT #100898
CHRISTINE J. LEVIN #192181
COLEMAN & HOROWITT, LLP
Attorneys at Law
499 West Shaw, Suite 116
Fresno, California 93704
Telephone: (559) 248-4820
Facsimile: (559) 248-4830

Attorneys for Plaintiff,
U.S. SMALL BUSINESS ADMINISTRATION,
as Receiver for PROSPERO VENTURES, L.P.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

U.S. SMALL BUSINESS
ADMINISTRATION, as Receiver for
PROSPERO VENTURES, L.P.,

Plaintiff,

v.

HIGH GROWTH MANAGEMENT, LTD.,

Defendant.

NO. C 07-03735 MEJ
Related Cases

No. C 07-03732 MEJ
No. C 07-03733 MEJ
No. C 07-03736 MEJ
No. C 07-03737 MEJ
No. C 07-03738 MEJ
No. C 07-03739 MEJ
No. C 07-03740 MEJ
No. C 07-03741 MEJ

**DECLARATION OF BRIAN STERN
IN SUPPORT OF APPLICATION
FOR DEFAULT [Filed concurrently
with Application for Judgment,
Memorandum of Points and
Authorities, Declaration of Christine J.
Levin, and Proposed Judgment]**

Date: January 17, 2008
Time: 10:00 a.m.
Courtroom B, 15th Floor

I, BRIAN STERN, do hereby declare and state as follows:

1 Stay Order is attached hereto as Exhibit "B."

2 7. PROSPERO is a California Limited Partnership. It maintained its last principal office
3 and place of business at 870 Market Street, Suite 1040 San Francisco, California 94102. The
4 underlying lawsuit is brought solely on behalf of PROSPERO.

5 **SERVICE OF COMPLAINT ON JERARLD P. SHAEVITZ**
6 **(HIGH GROWTH'S AGENT FOR SERVICE OF PROCESS)**

7 8. Defendant HIGH GROWTH MANAGEMENT, LTD, (hereinafter "HIGH
8 GROWTH") was a limited partner that failed to make its required capital contributions.

9 9. HIGH GROWTH is a foreign corporation with its principal place of business located
10 in Hong Kong. HIGH GROWTH is not a permanent resident of the United States.

11 10. HIGH GROWTH irrevocably appointed Jerald P. Shaevitz as its agent for service of
12 process in the enforcement of the defendant's capital contribution. A true and correct copy of the
13 contract irrevocably appointing Jerald P. Shaevitz is attached hereto as Exhibit "C."

14 **AGREEMENT BETWEEN PROSPERO AND HIGH GROWTH**

15 11. On or about April 1, 1999, PROSPERO and HIGH GROWTH entered into a written
16 partnership agreement. That agreement was subsequently modified on or about September 10, 1999
17 in a document entitled "Amended & Restated Agreement of Limited Partnership for Dotcom
18 Ventures, L.P. (formerly ASCII Ventures, L.P.) a California Limited Partnership (hereinafter
19 "PARTNERSHIP AGREEMENT." A true and correct copy of which is attached hereto as Exhibit
20 "D."

21 12. The PARTNERSHIP AGREEMENT was entered by Amy L.K. Lo of HIGH
22 GROWTH. A true and correct copy of the signatory is attached hereto as Exhibit "E."

23 13. Paragraph 1.6 of the PARTNERSHIP AGREEMENT entitled Capital Commitment
24 states the following: "A Partner's Capital Commitment shall mean the amount that such Partner has
25 agreed to contribute to the capital of the Partnership as set forth opposite such Partner's name on
26 Exhibit A hereto."

27 14. Pursuant to Exhibit A of the PARTNERSHIP AGREEMENT, HIGH GROWTH
28 agreed to contribute \$124,752 to the partnership.

15. A review of the books and records maintained by PROSPERO shows that HIGH GROWTH paid only \$62,376 which is only one-half of the requisite contribution.

BREACH OF PARTNERSHIP AGREEMENT

16. On or about November 10, 2004, I notified HIGH GROWTH via certified mail that SBA had been appointed Receiver of PROSPERO and informed HIGH GROWTH that the Receiver had taken over control of the assets and operations of PROSPERO. A true and correct copy of that letter is attached hereto as Exhibit "F."

17. On or about May 9, 2005, I sent formal demand via certified mail that HIGH GROWTH's unfunded capital commitment be paid in full no later than June 17, 2005. A true and correct copy is attached hereto as Exhibit "G."

18. Despite demand, no additional payment of capital was made by HIGH GROWTH.

CALCULATION OF INTEREST

19. Paragraph 5.7(b)(I) of the PARTNERSHIP AGREEMENT provides that a defaulting partner shall pay interest on the amount of its capital contribution then due "... at an interest rate equal to the floating commercial rate of interest publically announced by Bank of America, San Francisco, California, as its prime rate plus four percent (4%) per annum, such interest to accrue from the date the contribution to the Partnership was required to be made ... until the date the contribution is made ..." The prime rate at the Bank of America, San Francisco, California, during the applicable time, was five percent (5%) per annum, thereby totaling nine percent (9%).

20. On a balance of \$62,376, interest accrues at a daily rate of \$15.38.

21. Demand was made that the requisite contribution be made no later than June 17, 2005. There are 881 days between the date that the demand for payment be made and November 15, 2007. With interest accruing daily at a rate of \$15.38 daily for 881 days, as of November 15, 2007, the total interest due is \$13,550.12.

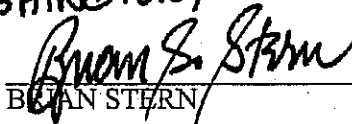
///

///

///

///

1 I declare under penalty of perjury under the laws of the United States of America that the
2 foregoing is true and correct.

3 Executed on December 7, 2007, at WASHINGTON, DC
4 
5 BRIAN STERN

PROOF OF SERVICE

I declare that I am a resident of the County of Fresno. I am over the age of eighteen (18) years and not a party to the within action. My business address is 499 West Shaw, Suite 116, Fresno, California 93704.

On December ¹²11, 2007, I served the foregoing document described as **DECLARATION OF BRIAN STERN IN SUPPORT OF APPLICATION FOR DEFAULT** on the interested parties, addressed as follows:

☒ BY MAIL - by placing ☒ a true and correct copy ☐ the original thereof enclosed in a sealed envelope with postage thereon fully prepaid in the firm's outgoing mail. I am "readily familiar" with the firm's practice of collecting and processing correspondence for mailing. It is deposited with United States Postal Service on that same day in the ordinary course of business.

☐ BY CALIFORNIA OVERNIGHT - by placing ☐ a true and correct copy ☐ the original thereof enclosed in a sealed envelope for delivery via California Overnight next day delivery to the addressee noted above.

☐ BY HAND DELIVERY - by delivering by hand and leaving a true copy with the person and at the address shown above.

☐ BY FACSIMILE TRANSMISSION - by causing a true facsimile thereof to be electronically transmitted to the parties, by using their facsimile number indicated below.

Facsimile No.

☐ STATE: I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☒ FEDERAL: I declare that I am employed in the office of a member of the bar of this court at whose direction service was made.

Executed on December ¹²11, 2007, at Fresno, California.


Lisa R. Barr

Via U.S. Mail

Jerald P. Shaevitz
24175 Dawnridge Dr.
Los Altos Hills, CA 94024

Agent for Defendants,
High Growth Management, Ltd.

Via California Overnight:

Chambers Copies

Hon. Maria-Elena James
U.S. District Court, Northern District
450 Golden Gate Avenue
16th Floor, #1111
San Francisco, CA 94102